ORIGINAL

ANN BAVENDER*
JAMES A. CASEY
KAREN L. CASSER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
EDWARD W. HUMMERS, JR.
FRANK R. JAZZO
CHARLES H. KENNEDY*
KATHRYN A. KLEIMAN
PATRICIA A. MAHONEY
M. VERONICA PASTOR*
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
MARVIN ROSENBERG
KATHLEEN VICTORY*
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

HILDRETH@ATTMAIL.COM

ROBERT L. HEALD
(1956-1963)
PAUL D.P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1938-1961)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN
FRANK U. FLETCHER

CONSULTANT FOR INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-
0403

RECEIVED
JUL 14 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 14, 1995

DOCKET FILE COPY ORIGINAL

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: IB Docket No. 95-59
Preemption of Local Zoning
Regulation of Satellite Antennas

Dear Mr. Caton:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc. ("USSB"), a licensee in the direct broadcast service ("DBS"), is an original and 4 copies of its Comments in the above-referenced docket.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,

Paul J. Feldman
Counsel for
United States Satellite Broadcast
Company, Inc.

pf:ik
Enclosure

No. of Copies rec'd 0+4
List ABCDE

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	IB Docket No. 95-59
Preemption of Local	)	DA 91-577
Zoning Regulation of	)	45-DSS-MISC-93
Satellite Antennas	)	

COMMENTS OF UNITED STATES SATELLITE BROADCASTING COMPANY, INC.

UNITED STATED SATELLITE
BROADCASTING COMPANY, INC.

Marvin Rosenberg
Paul J. Feldman

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North Seventeenth Street, 11th Floor
Rosslyn, VA 22209
703/812-0400

July 14, 1995

Summary

United States Satellite Broadcasting Company, Inc. ("USSB") is the operator of one of two high-power direct broadcast satellite ("DBS") systems providing service in the United States. It is a pioneer in the field of DBS, and it has invested substantial effort and resources to launch DBS and to ensure that DBS continues to develop into a dynamic, technologically advanced service. With the commencement of service in June of 1994, DBS provides, for the first time, a major nation-wide multichannel video service to compete with cable TV service. This competition will provide consumers with greater choice, innovative services, and lower prices. By the end of 1995, it is estimated that there will be over 2 million subscribers to DBS, with the expectation that ultimately, many millions more will subscribe to DBS service. However, USSB is concerned that the actions of some local authorities may improperly impede the development of this service, which the Commission has determined is in the public interest. The actions taken by the Town of Deerfield, New York, constitute only one example of improper restrictions placed on earth stations. Indeed regulations recently enacted by some municipalities that purport to ease the installation of DBS dishes, in fact fail to do so. In sum, the record demonstrates that local zoning regulations impede important federal interests in facilitating the distribution of satellite services, and in promoting competition in the provision of multichannel video services. The Commission must take quick and effective steps to remove further barriers to the development of a healthy and competitive satellite-delivered video market.

The modification of Section 25.104 proposed in the *Notice* constitutes an important step towards remedying the problems discussed above. However, while

USSB believes that the existence of a presumption that zoning regulations affecting small receive-only dishes are unreasonable, is an improvement over the lack of any such presumption (as is the case in the current version of the Rule), the record in this proceeding, as supplemented herein, demonstrates that the Commission should preempt all zoning (and related) regulations affecting dishes one meter in diameter or smaller. It is clear that any health, safety or aesthetic considerations underlying such local regulations are not applicable to small DBS dishes, and such regulations unnecessarily impede important federal interests. The fairest and most efficient approach to remedy this situation is total preemption. In any event, portions of the proposed Section should be modified to make it more clear and more comprehensive, to facilitate the proper interpretation of the Section by local officials.

Table of Contents

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	IB Docket No. 95-59
Preemption of Local	)	DA 91-577
Zoning Regulation of	)	45-DSS-MISC-93
Satellite Antennas	)	

COMMENTS OF UNITED STATES
SATELLITE BROADCASTING COMPANY, INC.

United States Satellite Broadcasting Company, Inc. ("USSB"), by its attorneys, hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking, released May 15, 1995, in the above-captioned proceeding ("*Notice*"). USSB asserts that the modification of Section 25.104 of the Commission's Rules proposed in the *Notice,* clarified as proposed herein, is necessary to ensure the federal interests in the availability of satellite-delivered communications, and in the development of competition in the provision of multichannel video programming services.

I. INTRODUCTION

USSB is the operator of one of two high-power direct broadcast satellite ("DBS") systems providing service in the United States. It is a pioneer in the field of DBS, and it has invested substantial effort and resources to launch DBS and to ensure that DBS continues to develop into a dynamic, technologically advanced service. With the commencement of service in June of 1994, DBS provides, for the first time, a major nation-wide multichannel video service to compete with cable TV service. This

competition will provide consumers with greater choice, innovative services, and lower prices. By the end of 1995, it is estimated that there will be over 2 million subscribers to DBS, with the expectation that ultimately, many millions more will subscribe to DBS service. However, USSB is concerned that the actions of some local authorities may improperly impede the development of this service, which the Commission has determined is in the public interest.[1] The actions taken by the Town of Deerfield, New York, constitute only one example (with many more in existence) of improper restrictions placed on earth stations. The experience of the citizen in the Deerfield case and the decision of the Court of Appeals in that proceeding[2] demonstrate that the Commission must take quick and effective steps to remove further barriers to the development of a healthy and competitive satellite-delivered video market.

II. MODIFICATION OF SECTION 25.104 IS NECESSARY IN ORDER TO PROTECT IMPORTANT FEDERAL INTERESTS.

A. Federal Interests

At stake in this proceeding is the preservation of the important federal interest in the provision of communications services, and the benefits that consumers throughout the country receive as a result of the enforcement of that interest. As stated in the *Notice*, there is a "strong federal interest in facilitating the distribution of interstate satellite communications:"

---

[1] Direct Broadcast Satellites, Report and Order, 90 FCC 2d 676 (1982).

[2] E.g., Carino v. Pilon, 530 N.Y.S. 2d 1022 (4th Dept. 1988), Carino v. Pilon, 534 N.Y.S. 2d 935 (1988); Carino v. Town of Deerfield, 750 F. Supp. 1156 (N.D.N.Y. 1990), aff'd 940 F.2d 649 (2d Cir. 1991); In re Preemption of Satellite Antenna Zoning Ordinance of Town of Deerfield, New York, 7 FCC Rcd 2172 (1992); rev'd sub. nom. Town of Deerfield v. FCC, 992 F.2d 420 (2d Cir. 1993).

> [T]he broad mandate of Section 1 of the Communications Act, 47 U.S.C. § 151, to make communications services available to all people of the United States and the numerous powers granted by Title III of the Act with respect to the establishment of a unified communications system establish the existence of a congressional objective in this area. More specifically, the recent amendment of the Communications Act, 47 U.S.C. § 705, creates rights to receive unscrambled and unmarketed satellite signals. These statutory provisions establish a federal interest in assuring that the right to construct and use antennas to receive satellite delivered signals is not unreasonably restricted by local regulation.

Notice at para. 3, citing *In re Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations*, 51 Fed. Reg. 5519 (Feb. 14, 1986)(hereinafter, the "*1986 Preemption Order*"). It has long been recognized that the Communications Act gives the Commission broad authority not only to promote the availability of new telecommunications services to the public,[3] but to preempt local regulations that interfere with the development of those services.[4]

Further, as the Commission has properly recognized, Section 705 of the Communications Act was designed to create a federal right to receive satellite programming.[5] Congress again recognized the importance of satellite-delivered video

---

[3] Indeed, the authority of the Commission to authorize DBS was upheld in part on the basis of the Commission's broad powers under Section 1 of the Act. *See, NAB v. FCC*, 740 F.2d 1190 (D.C. Cir. 1984).

[4] *See, e.g., City of New York v. FCC,* 108 S.Ct. 1637 (1988). *See also, Private Carrier Systems, First Report and Order,* 57 RR 2d 1486 (1986) at para. 67 (using Section 1 of the Act as a basis for preempting state regulation of commercial provision of private carriage microwave services).

[5] *See, e.g.*, 130 Cong. Rec. S 14286 (Statement of Senator Packwood, October 11, 1984), *reprinted in* 1984 U.S. Code Cong. & Admin. News 4738, 4745.

programming to home satellite dish owners in enacting the Satellite Home Viewer Act of 1988 and the Satellite Home Viewer Act of 1994.[6]

In addition to the federal interest described above, the Commission's proposed action in this proceeding is supported by the broad federal interest in promoting competition in the provision of multichannel video services. The Cable Television Consumer Protection and Competition Act of 1992[7] was premised on Congressional findings that cable TV operators faced no competition in the provision of multichannel video services, and that as a result of this undue market power, charges to subscribers for cable TV services had grown at a rate substantially higher than the rate of inflation.[8] However, while Congress mandated a substantial regime for the regulation of cable TV rates by the Commission, Congress expressly stated that such regulations should be considered as an interim measure until the advent of effective competition which will check the market power of cable TV operators.[9] The Commission has recognized that

---

[6] *See* Pub. L. No. 100-667, 102 Stat. 3935 (Satellite Home Viewer Act of 1988); and Pub. L. No. 103-369, 108 Stat. 3477 (Satellite Home Viewer Act of 1994); codified at 47 U.S.C. § 119.

[7] Pub. L. No. 102-385, 106 Stat. 1460, codified at 47 U.S.C. § 151 *et. seq.*(hereinafter the "1992 Cable Act").

[8] *See, e.g.,* Secs. 2(a)(1)-(2) of the 1992 Cable Act. See also House Committee on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 26:

> H.R. 4850 is designed to address the principal concerns about the performance of the cable industry and the development of the market for video programming since passage of the [1984] Cable Act. This legislation will protect consumers by preventing unreasonable rates ....

[9] *See, e.g.,* Secs. 2(b)(2)and(4) of the 1992 Cable Act. *See also* Sec. 623 (a)(2) of the Communications Act (rate regulation prohibited for cable systems subject to effective competition).

while DBS has the potential to play an important role in bringing competition to the multichannel video market,[10] the market is not yet competitive, and local zoning regulations inhibit the ability of DBS providers to compete with cable TV operators.[11]

B. The Need to Modify Section 25.104

As shown above, important federal interests are at stake, and the record already created in this proceeding (45-DSS-MISC-93) demonstrates that the improper, and often arbitrary, use of local zoning regulations has substantially impeded the advancement of these interests.[12] Clearly, local zoning regulations that bar the use of satellite dishes improperly impinge on these important federal interests, and the Commission has also recognized that local regulations that impose substantial financial disincentives on users, either through the cost of compliance with administrative procedures, or though litigation to enforce the right to receive satellite signals, equally impede the achievement of these important federal interests.

It should be noted that local regulations that improperly impede the receipt of satellite services are not just a "relic" of the past, when only large C-band dishes were

---

[10] *See, Assessment of Competition in the Market for the Delivery of Video Programming, First Report and Order*, 9 FCC Rcd 7442, 7449, 7541-42 (1994) (hereinafter, "*1994 Competition R&O*").

[11] *See 1994 Competition R&O*, 9 FCC Rcd at 7555. It should be noted that while local zoning regulations regarding satellite antennas are designed, on their face, to address safety and aesthetic concerns, these regulations can be improperly used to limit the growth of satellite video services, thus preserving revenues earned by cable TV operators, and the cable TV franchise fees paid to local authorities.

[12] *See, e.g.,* Comments of American Satellite Television Alliance, Comments of Satellite Broadcasting and Communications Association, and Comments of Robert J. Abbott, filed July 12, 1993.

available to residential subscribers. Rather, many municipalities have recently enacted zoning regulations that explicitly address smaller DBS dishes. Unfortunately, while these regulations appear at first glance to be more liberal than those applicable to C-band dishes, these regulations still improperly and unnecessarily burden residents who wish to receive DBS service. For example, attached as Exhibit A are building permit requirements for satellite dishes recently enacted by the City of Palos Verdes Estates, California. No satellite dish 12 inches in diameter or larger may be placed in a front or side yard, or mounted on a building. In addition, all dishes must be screened. In many cases, these overly broad requirements may block the necessary line of site to the transmitting satellite, resulting in a practical prohibition on the use of DBS dishes. And even if the Palos Verdes residents comply with these requirements, they still must obtain a building permit. As seen in Exhibit A, obtaining the building permit requires spending a minimum of $115 in administrative fees, and requires going to City Hall, filling out an application, and waiting for City inspectors to come and approve the dish installation. These procedures, and their associated costs (administrative costs and the cost of compliance with screening and other requirements), unnecessarily burden subscribers rights to receive satellite services. In addition, when contrasted with the fact that the city does not mandate any charges for obtaining cable TV service, the requirements under the Palos Verdes regulations certainly serve to hamper the ability of DBS providers to compete with cable operators.[13]

Regulations recently enacted by the City of Thousand Oaks, California, attached

---

[13] It appears that the Palos Verdes regulations would be preempted under the revised Section 25.104 proposed in the *Notice*.

hereto as Exhibit B, suffer from similar infirmities. Installations of satellite dishes 18 inches or smaller require a building permit (for commercial users) or special use permit (for residential users) if the dish is installed in any place that is visible from a public right of way.[14] Not only does roof-mounting or placement in a front or side yard trigger this requirement, but placement at any height above six feet from the ground (apparently even in a back yard) triggers the necessity for a building or special use permit as well. When combined with satellite dish line of site requirements, the Thousand Oak ordinance will result in many residents having to obtain permits for DBS dishes. A detailed plan of design (*see* Section IV of the Ordinance, in Exhibit B) must be submitted to the City's planning department, which can then approve, disapprove, or conditionally approve any such proposal, based on five vague principles (including "substantially depreciate property values," "deter an orderly and attractive development of the community" for building permits and "not ... contrary to the purposes of this resolution" for special use permits). To obtain a building permit, the dish must be screened, fenced, and color coordinated with the background. A processing fee of $80 is charged for special use permit applications.

As is the case with the Palos Verdes ordinance, while the regulation may ease installation of DBS dishes for a few subscribers, many more will still have to go through the permit process, with all of the associated delays, costs, and the chance of arbitrary

---

[14] *See* Section VII of the Ordinance ("... 18" diameter and smaller dish antennas are allowed in the City without a discretionary entitlement permit, provided they are not visible from the public right-of-way, and in residential zones, are not roof-mounted nor exceed 6' in height when measured from ground-level to the top of the antenna, including all other components. In locations other than specified above, the installation of 18" dish antennas must comply with the guidelines set forth herein.")

denial. Such regulations continue to burden federally protected rights, and substantially hamper the development of competition in the multichannel video market.

While parties wishing to receive satellite services may resort to litigation to enforce their federally mandated rights, such a remedy has been unsatisfactory and insufficient for three reasons. First, the litigation surrounding the Deerfield case, and other cases, demonstrates that courts often uphold improper ordinances as a result of the vagueness in the current version of Section 25.104, or as a "nod" to the authority of local authorities. Second, many courts have upheld zoning regulations that improperly infringe on the right to receive satellite signals, because the regulations do not differentiate between satellite and other types of antennas, as required in the current version of Section 25.104.[15] Lastly, even if a party succeeds in obtaining a court order allowing the placement of a satellite receive dish, the cost of litigation is extraordinary in comparison to the cost of the dish.[16] Faced with the high cost of litigation (in money and time), most people will be dissuaded from enforcing their rights.

In sum, important federal interests in promoting satellite communications, and increasing competition in the provision of multichannel video services, have for years been improperly impeded by local zoning regulations. Litigation has, at best, been a costly and inconsistent remedy for the few individuals willing to shoulder the burden of

---

[15] *See, e.g., Easlick v. City of Lansing*, 875 F.2d 863 (6th Cir. 1989); *Brophy v. Town of Castine,* 534 A.2d 663 (Me. 1987); and *Olsen v. Mayor & City Council of Baltimore*, 582 A.2d 1225 (Ct. App. Md. 1990).

[16] *See, e.g.,* Comments of Robert J. Abbott, *supra* note 12, stating that he has already spent "well over the $14,000 spent by Mr. Carino [the plaintiff in the Deerfield proceeding] ...."

defending their federally mandated rights. And while some municipalities have recently enacted ordinances purportedly easing the use of DBS dishes, as shown herein, those ordinances will not remedy the burden on many DBS users, as a practical matter. Accordingly, the Commission has properly concluded that Section 25.104 should be modified.

III. THE PROPOSED SECTION 25.104 SHOULD BE MODIFIED TO ADD A *PER SE* PREEMPTION OF ONE METER DISHES, AND TO MAKE IT MORE CLEAR AND MORE COMPREHENSIVE.

The modification of Section 25.104 proposed in the *Notice* constitutes an important step towards remedying the problems discussed above. However, as discussed more fully below, the record supports revising the rule to create a *per se* preemption of one meter dishes in all areas. In any event, portions of the proposed Section should be modified to make it more clear and more comprehensive, to facilitate the proper interpretation of the Section by local officials.

A. The Elimination of the "Differentiation" Requirement

USSB supports the Commission's proposal to eliminate the condition that local ordinances differentiate between satellite and other antennas as a precondition to preemption. As the Commission stated in the *Notice*, this requirement obscured the full scope of the federal interest in this area. Furthermore, as noted above, this requirement has had the unintended consequence of courts upholding otherwise improper zoning regulations. *See* note 14 *supra*.

B. *Per Se* Preemption of Regulation of One Meter Dishes And Revision to the "Reasonableness" Test

Proposed Section 25.104(a) retains the concept that only local zoning ordinances that are "unreasonable" are preempted. Reasonableness is determined by balancing the health, safety or aesthetic concerns underlying the ordinance against the federal interests at stake in this proceeding. Regulations affecting the use of two meter or smaller dishes in commercial or industrial zones, and one meter or smaller dishes in all zones, are presumed to be unreasonable, although such a presumption may be rebutted (Sections 25.104(b) and (c)).

While USSB believes that the existence of a presumption that zoning regulations affecting one meter dishes are unreasonable, is an improvement over the lack of any such presumption (as is the case in the current version of the Rule), the record in this proceeding, as supplemented herein, demonstrates that the Commission should preempt all zoning (and related) regulations affecting dishes one meter in diameter or smaller as *per se* unreasonable. It is clear that any health, safety or aesthetic considerations underlying such local regulations are not applicable to small DBS dishes, and such regulations unnecessarily impede important federal interests. The fairest and most efficient approach to remedy this situation is total preemption.[17]

In regards to the specific language of proposed Section 25.104(a), it has been USSB's experience that local zoning officials often will only read the FCC regulation itself (if that), and not any *Report and Order* explaining or expanding the meaning of the

[17] Of course, in extraordinary situations where local circumstances might justify regulation of small dishes, municipalities could still resort to use of the waiver procedure established in proposed Section 25.104(f).

Rule. In order to maximize the practical impact of the Commission's action in this proceeding, USSB recommends that Section 25.104(a) be modified to make it both more clear and more comprehensive, so that the reader need not refer back to an accompanying Commission *Order*. These clarifications will increase the likelihood that the rule will be properly applied by local zoning officials, since it will be less vague, and less subject to abuse. Furthermore, satellite users will have greater certainty regarding their rights. Accordingly, proposed Section 25.104(a) should be modified to read:[18]

> (a) Any state or local **zoning,** land-use, building, **permitting** or similar regulation that substantially limits reception by receive-only antennas **one meter in diameter or less**, or imposes ~~substantial~~ **more than minimal** costs on users of such antennas, **is deemed unreasonable, and is therefore preempted. Any such local zoning, land-use, building, permitting or similar regulation that substantially limits reception by, or imposes more than minimal costs on users of, receive-only antennas greater than one meter in diameter,** is preempted unless the promulgating authority can demonstrate that such regulation is reasonable in relation to:
>
> (1) a clearly defined, and expressly stated health, safety, or aesthetic objective; and
>
> (2) the federal interests in fair and effective competition among competing communications service providers**, and in facilitating the distribution of interstate satellite communications (as mandated in 47 U.S.C. § 151 and 47 U.S.C. § 605).**

Adding the words "zoning" and "permitting" clarifies the scope of the local ordinances subject to Section 25.104, rather than merely relying on the words "or similar regulation." And while it is probably impossible to modify the word "costs" precisely without limiting the intended flexibility of the rule, the proposed language referring to "substantial" costs connotes an amount greater than the "rather low threshold" sought

---

[18] Proposed additions are in **bold** font, proposed deletions are in ~~strikeout~~ font. For the sake of convenience, all revisions to Section 25.104 proposed by USSB are set forth together in Exhibit C hereto.

by the Commission.[19] "More than minimal" costs more closely reflects the Commission's intentions.

As noted above, the Commission should totally preempt local regulation of receive-only dishes one meter in diameter or smaller.[20] However, USSB recognizes that the Commission could take a different approach on larger dishes. The procedure proposed in the *Notice*, a balance test with a rebuttable presumption that local regulation of two meter dishes is unreasonable, appropriately protects important federal interests, while allowing for legitimate application of local interests to larger dishes. However, some of the language in the "reasonableness" test and rebuttable presumption set forth in Sections 25.104(a) and (c) should be slightly modified to make the rule more clear and more comprehensive.

As proposed in the *Notice*, Section (a) requires a balance between local and state interests. As demonstrated in Section II of these comments, the federal interests at stake include:

1. the broad mandate under Section 1 of the Communications Act to make communications services widely available; including

2. the mandate under Section 705 of the Act to protect the rights of people to receive unscrambled satellite signals; and

---

[19] *See Notice* at para. 5.

[20] Accordingly, the language in Section 25.104(b)(2) proposed in the *Notice* creating a presumption that regulation of dishes one meter in diameter or less is presumed unreasonable, is no longer necessary, and should be deleted. However, should the Commission forebear from totally preempting local regulation of one meter dishes, then the language of Section 25.104(b) would be necessary, and should be retained.

3. the mandate under the 1992 Cable Act and other Commission policies to promote competition in the multichannel video market.

While the Commission has premised its action in this proceeding on promoting all three of the above interests,[21] it has apparently inadvertently omitted the first two interests from the rule section describing the interests to be balanced. If local officials are to perform a balancing test, it is more likely that they will consider all of the appropriate criteria if all of the criteria are stated in the rule itself, rather than in an accompanying *Report and Order*.[22] Accordingly, USSB suggests that Section (a)(2) be modified to explicitly include the federal interests "in facilitating the distribution of interstate satellite communications (as mandated in 47 U.S.C. § 151 and 47 U.S.C. § 605)." Inclusion in the rule of citations to the appropriate Sections of the Communications Act will more clearly convey to local officials the weight of the federal interests involved, so that they can more accurately and appropriately perform the initial balance test set forth in the rule.

Section 25.104(b) establishes a presumption that zoning ordinances affecting the use of two meter dishes in commercial areas are unreasonable. Such a presumption is clearly appropriate: an important factor in services using small dishes is the ease and speed of installation of such dishes, and in light of the diminished aesthetic and safety concerns triggered by small dishes, such uses should not be unfairly squelched by local officials. Nevertheless, in recognition of the possibility of legitimate concerns regarding

---

[21] *Notice* at para. 5.

[22] Similarly, Commission preemption actions subject to judicial review are more likely to be upheld if all of the balancing criteria are in the rule section.

small dishes, Section 25.104(c) establishes the procedures under which local officials may make a showing to rebut the presumptions in paragraph (b). USSB recommends, however, that the required showing set forth in Section (c)(1) should be of a reasonable health or safety objective. There has never been any suggestion in scientific literature of any health concern associated with small receive-only satellite dishes. Nevertheless, in an age of generalized anxiety regarding the rapid pace of technological change, it is not unheard of for people to place irrational fears on safe mechanical devices. Accordingly, the language of Section (c)(1) should be modified to add the word "reasonable" before "health or safety objective."[23]

C. Exhaustion of Administrative Remedies

USSB agrees that one result of the Deerfield decision is that if the Commission is going to intervene in disputes over local zoning of satellite dishes, it must do so before a federal court has ruled on the matter. *See Notice* at para. 48. Indeed, as discussed in Section II above, USSB believes that litigation in state or federal courts is an inefficient and unsatisfactory approach to resolving these problems. Accordingly, USSB applauds the Commission decision to require that petitioners only exhaust administrative remedies prior to seeking the assistance of the Commission.

USSB shares the Commission's concern that dish users have access to a prompt remedy since, as noted above, much of the value of new satellite services is derived from the speed with which dishes can be installed and service provided to the consumer. Similarly, such speed of initiation of service is critical if DBS services are to

---

[23] USSB also suggests adding the word "and" at the end of Section (c)(2) to make explicit to local officials that a showing under Section (c) must include all three criteria.

compete with cable TV services, which are usually initiated a few days or one week after ordering. Accordingly, while USSB recognizes that it takes time for the processing of zoning and permit applications, it is critical that users be deemed to have exhausted their remedies after such permits have been pending for no longer than ninety days, as suggested by the Commission. Such a time period must include administrative appeals, etc.[24]

IV. CONCLUSION

The record in this proceeding, and more recent events, demonstrates that the modification of Section 25.104 of the Commission's Rules is necessary to ensure the federal interests in the growth of satellite-delivered communications, and in competition in the provision of multichannel video programming services. The modifications proposed in the *Notice* are a step in the right direction. However, the Commission should totally preempt local zoning regulations affecting satellite dishes one meter in

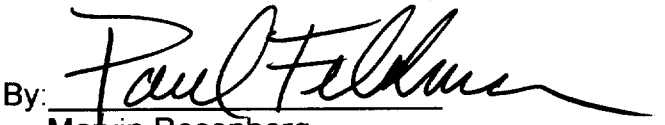
---

[24] USSB also recommends that Section (e)(3) be modified to delete the requirement that the petitioner be informed that his permit or authorization will be conditioned on a substantial expenditure. It should be sufficient that the facts are that the permit will be so conditioned, regardless of whether the petitioner has learned of such facts by "being informed" by local officials, or by requirements explicitly stated in local ordinances.

diameter or smaller. Furthermore, the proposed rule Section should be clarified and made more comprehensive, as suggested herein, in order to maximize its effectiveness.

Respectfully submitted,

UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.

By: 
Marvin Rosenberg
Paul J. Feldman

July 14, 1995

Its Attorneys

FLETCHER, HEALD, & HILDRETH, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703)812-0400

EXHIBIT A

PALOS VERDES GOLF CLUB ANNOUNCES NEW MEMBERSHIP OPPORTUNITY

Effective February 1, 1995, the Palos Verdes Golf Club will have a new membership category known as **CLUBHOUSE MEMBER.**

This membership is designed for the person who has no special interest in playing golf, yet would enjoy the privileges of using the clubhouse for social purposes, charging privileges and receipt of the Palos Verdes Golf Club newsletters. Interested persons may obtain information by calling the Golf Club at (310) 375-2533.

WHEN A BUILDING PERMIT IS REQUIRED

The following items require permits from the City:

- Any structure that is erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished.
- Any new plumbing, electrical lines or mechanical equipment. This includes change-outs of water heaters, forced air units, dishwashers or appliances where new plumbing or electrical is required.
- Any earth moving or grading - including any removal or filling of earth on private property or on City right-of-way adjacent to your property.
- Any masonry structure including fences, walls, or mailboxes.
- Any fence over six feet in height (prohibited in front yards).
- Re-roofing
- **Satellite dishes- twelve inches in diameter or larger used for the reception of communications relayed from earth-orbiting satellites. or other communications systems. This includes the new *digital satellite systems.***

PALOS VERDES TENNIS CLUB OFFERS VARIED PROGRAMS.

RESIDENTS INVITED TO JOIN...

A busy year of tennis and social activities is planned for 1995 at the Palos Verdes Tennis Club. The Club located at 3303 Via Campesina, adjacent to the Golf Club, features 12 courts, 10 of which are lighted for night play. The Club offers many family-oriented activities, group and private tennis lessons, Marine League, member/guest and men's and women's pro-am tournaments.

An active Junior Program is also offered for all children of all ages and ability levels. Residents are invited to drop by for open play and find out about membership openings. Fees are required for non-members. Call the Club at 373-6326 for more information about activities and membership.

EARTHQUAKE PREPAREDNESS

The installation of earthquake-sensitive gas shut-off valves on homes and buildings in the City is strongly encouraged. At a City Council meeting last year, Dr. Thomas Henyey, Executive Director of the Southern California earthquake Center, stated that the biggest danger to Peninsulans, where houses are typically well-built, would be from fire - particularly in the heavily wooded areas on the Peninsula such as the grove area of PVE.

City staff is compiling a list of licensed plumbing contractors who would be interested in furnishing and installing earthquake-sensitive gas shut-off valves on buildings. The list will be available for consumer review at the City Hall public counter. ***The City will waive the plumbing permit fee for one year to encourage the installation of the earthquake-sensitive gas shut- off valves.*** Call the Building Department for more information at 378-0383.

CITY OF PALOS VERDES ESTATES
SATELLITE DISH REQUIREMENTS & APPLICATION

The City Council has enacted Ordinances 393 and 398 to regulate the installation of Satellite Dish Antennas. Ordinance 393 states that the installation of such structure is subject to the Planning Department for approval of location and Building Department for a permit.

The term "dish antennae" shall mean any structure located outside the dwelling unit, 12" in diameter or larger used for the reception of communications relayed from earth orbiting satellites or other communication systems. Dishes may be installed any where in the City as long as it conforms to the following:

1. The structure shall not be located in any front yard or sideyard setback area.
2. The structure shall be mounted on the ground and not on any buildings.
3. The structures shall be not greater than 15 feet for natural grade.
4. The color of the structure shall blend with the adjacent environment and vegetation.
5. The structure shall be hidden or screened to mitigate visual impact from neighboring properties or from public view.
6. All wiring shall be underground.
7. No more than one dish per building site is allowed.
8. There shall be no dishes approved for vacant lots.

<u>Requirements for obtaining a building permit:</u>

1. Applicant shall submit a plot plan showing the proposed location of the dish on the property, along with the manufacture's specifications for the dish.
2. The Palos Verdes Homes Association shall stamp the plot plan indicating that theyhave reviewed the location.
3. A $45.00 plan check fee shall be collected from the applicant when plans are submitted for review.
4. A field review of the location will be performed to approve the location.
5. When location is approved, a building permit may be issued and a fee of $50.00, plus $20.00 issuance fee and any electrical work which requires a permit and fees collected.

DATE _____ MISC. RECEIPT # _____ PLANNING DEPT. APPROVAL _____

NAME _____ ADDRESS _____

SIGNATURE OF OWNER _____

REPRESENTING OWNER _____ PHONE # OF OWNER _____

EXHIBIT B